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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,812

04/28/2006

Emmanouil Domazakis

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KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204-2079

EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,812	<b>Applicant(s)</b> DOMAZAKIS, EMMANOUIL	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission and amendments filed on November 27, 2009 have been entered. Claims 1-4 have been amended and examined in the application.

#### ***Information Disclosure Statement***

The information disclosure statement filed April 28, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The IDS has been placed in the application file, but the information referred to therein has not been considered. Applicant's response has been acknowledged and NPL documents have not been received by USPTO from the international authorities. NPL articles by Vural and Severini have still not been furnished by the applicant. Applicant is once again requested to provide a copy to the office.

#### ***Claim Rejections - 35 USC § 112(First paragraph)***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for incorporation or "addition of olive oil" and temperature range (See Publication, paragraph [0037], does not reasonably provide enablement for "without the use of emulsifying agents". The specification does not enable any person

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skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. In the instant case, the limitation "without the use of emulsifying agents" or emulsifier has been found. Thus although applicants' disclosure has support for addition of olive oil but no support has been found that precludes the addition of emulsifying agents. Correction is required.

Similarly applicants' recitation of "as a result of emulsification and physical entrapment" as recited in claims 1 and 3 also does not find support in the original disclosure. Correction is required.

***Claim Rejections - 35 USC § 112(second paragraph)***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' recitation of "fermented meat products in which liquid olive oil is incorporated as a result of emulsification and physical entrapment" in claims 1 and 3 renders the claim indefinite. It is unclear as recited as to what is encompassed by the term "liquid olive oil is incorporated as a result of emulsification and physical entrapment" as the term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Is it the olive oil that is emulsified and physically entrapped or is it the meat that is emulsified and entrapped or both. Correction and /or clarification is required.

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.

Ascertaining the differences between the prior art and the claims at issue.

Resolving the level of ordinary skill in the pertinent art.

Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas et al (Meat Science Vol.45, No.2, 133-144 1997) hereinafter Bloukas, in view of the combination of McKee et al (US 2060422), hereinafter McKee and Domazakis (WO 02/065860).

The applied reference Domazakis has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

Regarding claims 1-2, Bloukas teaches a method for the preparation of sausage or other meat-based products, which is characterized by the incorporation of olive oil. Bloukas teaches that meat is frozen at  $-20^{\circ}\text{C}$  (page 134, sausage formation, paragraph 1), and frozen meat is cut and then it is mixed with salt, sugars, preservative, auxiliary salts and cultures (Page 135, paragraph 1, lines 9-10 and paragraph 2). Regarding the temperature of the frozen meat as recited at  $-4^{\circ}\text{C}$  as claimed, Bloukas teaches of freezing the meat at  $-20^{\circ}\text{C}$  and chopping the frozen meat. Therefore, it would have been obvious to one ordinary skill in the art that the frozen meat as taught by Bloukas

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would be in the temperature range claimed by the applicant. Regarding low temperature processing of meats, Mckee teaches of processing meat at a temperature ranging from 25-32 °F (i.e., -3.8 to 0°C), which falls in applicant's recited temperature range of -4 to -2 °C. Mckee also teaches that if meat grinding or comminuting or processing is done while the meat is at or below freezing the color of the processed meat retains a desirable red or pink color (Page 1, Column 2, lines 50-55 and page 2, Column 1, lines 1-6). Thus, meat processing at below freezing temperatures was well known at the time of the invention. Bloukas also teaches processing the meat and olive oil product at low temperatures, which is also the intent of the applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bloukas and process the meat below the freezing temperature, as taught by Mckee. One of ordinary skill in the art would have been motivated to process the meat product in the recited range at least for the purpose of maintaining a desirable red or pink color in the processed meat product.

(b) Bloukas teaches of addition of liquid olive oil (page 134, sausage formation, paragraph 2 and Page 135, lines 18-19 and Table 1). Bloukas teaches of addition of olive oil as a liquid as well as emulsified form (See page 135, lines 18-19), where addition of olive oil alone satisfies the recited limitation.

Further, regarding the limitation of without the emulsifying agents, applicant is referred to the rejection under 35 USC 112 (First Paragraph)

(c) Bloukas teaches of mixing till the desirable meat and fat mixture is achieved (Page 135, Paragraph 2). Regarding the limitation of mixing until desirable meat and fat grain is achieved, Bloukas is silent. Domazakis teaches the steps of making meat and olive oil based sausage products in general, Domazakis teaches a method for the preparation of sausage or other meat-based products, which is characterized by the incorporation of olive oil, comprising processing temperatures in the range of -2 °C to 71 °C, wherein mixing meat at a temperature of -2 °C with water at a temperature of 2°C, salt, plant fibers and breadcrumbs (i.e., vegetable proteins and starch) (Page3, lines 24-

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26); adding olive oil (Page 3, lines 28); continuing mixing till the desirable similitude of the participating ingredients takes place (Page 2, lines 40-42), i.e., meat and fat grain is achieved. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bloukas and mix the ingredients until the desired meat and fat grain is achieved as taught by Domazakis at least for the purpose of preparing a sausage where the ingredients are well mixed.

(d) Bloukas teaches of mixing the meat and the mixture is then led to stuffing machines, where it is stuffed in casings under vacuum conditions (Page 135, paragraph 2, lines 7-10) Bloukas is silent regarding the pressure of vacuum stuffer. However, vacuum stuffing under vacuum conditions recited by the applicant were known in the art of sausage stuffing. Domazakis teaches conveying the sausage product to a filling machine (forming machine), where it is formed in desired shape and stored, with a simultaneous vacuum application at 1000 mbar as recited by the applicant in claim 1 step d (See page 3, lines 32-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bloukas, in view of Domazakis and apply vacuum in the range of 1000 mbar. One of ordinary skill would have been motivated to modify Bloukas and specifically apply the level of vacuum as taught by Domazakis at least for the purpose of obtaining desirable amount of compactness in the packaged meat product.

(e) Bloukas teaches of making the products where the products are led to maturation chambers with adjustable relative humidity 95-80%, temperature of 25-20.degree. C. and air velocity 0.5-0.8 m/sec. (Page 136, Table 2). Regarding the time of stay in the maturation chamber Bloukas teaches of times and conditions as applied in the industry and recommends 30 days for standard size 47 mm diameter casing stuffed with 1-1.5 kg stuffing in hand linked sausages (Page 135, paragraph 2, lines 7-11), which falls in the recited criteria of maturation (fermentation), i.e., based on the size of the product.

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(f) Bloukas teaches of dehydration or ripening in a chamber with relative humidity of 80%, temperature of 15 °C and air velocity 0.5-0.1m/sec (Page 136, Table 2 ripening), which fall within the drying conditions as recited in claim 1.

(B) Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas (Meat Science Vol.45, No.2, 133-144 1997), McKee (US 2060422) and Domazakis (WO 02/065860), further in view of Gryczka et al (US 4147807), hereinafter Gryczka.

Bloukas, in view of the combination of, Domazakis and Sonoma sausage have been applied to claims 1-2, in the office action above.

Bloukas, in view of the combination of, Domazakis and Sonoma sausage teach the fermented sausage processing conditions as recited in claims 1-2. Claims 3 and 4 comprise of added limitation of process steps involved in making partially fermented, semi-dry or dry sausages. Bloukas and Domazakis are silent as to the temperature and relative humidity conditions as recited in steps or phases (e') and (f') of claim 3.

Bloukas, however, teaches of processing conditions as air movement in the recited range of the applicant for steps (e') and (f'). Bloukas also teaches that the processing conditions followed are similar to those applied by the industry (Page 135, paragraph 2, last 3 lines). Therefore, one of ordinary skill in the art would be motivated to look to the art for process steps for making various kinds of sausages, including, fermented sausages. Regarding the process steps as recited in claim 3, Gryczka teaches of methods of making sausages including, semi-dry and dry sausages that are fermented, as instantly claimed. Gryczka teaches of sausages to a fermentation or maturation chamber where the rooms are kept at 10-26.6 °C and initial high relative humidity of above 80% , which is lowered to 65-80% to ensure that sausages dry from inside out (Column 5, lines 45-48), which fall in the recited temperature and relative humidity as recited by the applicant in phase (e') humidity 60-75%, temperature of 25-30 °C. The fermentation for dry sausage as taught by Gryczka lasts 2-10 days, which is more than

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24 hours as recited. However, it is noted that the time for fermentation of a meat product, such as a sausage is at least based on the amount and concentration of fermentation culture added, fermentation conditions and the level of fermentation desired.

Regarding phase (f') Bloukas teaches the ripening conditions as discussed regarding phase (f) of claim 1, however, Bloukas is silent about heating temperature of the meat product. Gryczka teaches that in making semi dry sausage the meat products after fermentation are heated at core (internal) temperatures of 26.6-52 °C with 75-95% relative humidity, i.e., heating meat products to an internal temperatures of about 55 °C and relative humidity in the recited range was known at the time of the invention. Since the applicant has not established the criticality of specific internal temperature of 55 °C and since heating the sausage products to an internal temperatures of about 55 °C was known at the time of the invention (Gryczka), it would have been obvious to one of ordinary skill in art to use or combine Gryczka in the temperature range as claimed, because it has been held that where the general conditions of the claims are disclosed in the prior art (Bloukas in view of Gryczka), it is not inventive to discover the optimum or workable range by routine experimentation. See MPEP 2144.05.

Regarding the dehydration chamber with adjustable relative humidity 80-75%, temperature of 12-17 °C and air velocity 0.5-0.1 m/sec, as recited in claim 3, phase (f'), applicant is referred to rejection of phase (f) of claim 1 by Bloukas in view of Domazakis as the same limitations are recited in phase (f).

Thus, fermentation conditions as recited by the applicant in claim 3, phases (e') and (f') were known at the time of the invention (Bloukas, Gryczka). Therefore, it would have been a matter of routine determination by one of ordinary skill in the art at the time of the invention to further modify Bloukas in view of Gryczka and apply the fermentation conditions as taught by Gryczka in order to make a fermented sausage product that is dried or semi dried after fermentation. One of ordinary skill in the art would have been motivated to modify Bloukas in order to make a fermented sausage product wherein the fermentation has been done to a desired level and then heated to stop fermentation and drying the sausage product from the inside out to make the sausage product

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microbiologically safe for consumption. Therefore, Bloukas in view of Domazakis and Sonoma sausage, further in view of Gryczka teaches of partial fermenting process products with incorporated olive oil, which produced according to claims 3-4.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Arguments***

Applicant's arguments with respect to the amended claims dated 11/27/2009 have been fully considered but they are moot in view of new grounds of rejection.

Applicants' arguments regarding Bloukas and Domazakis have been fully considered and responded in the rejection above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/  
Examiner  
Art Unit 1794

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1794